

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an application for bail under and in terms of section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929 as amended by the Acts No. 13 of 1984 and No. 41 of 2022.

Karunapedige Chaminda Kumara
Weerasena
No. 4, Korossa, Udugampola

Court of Appeal Bail Application

No: **102/2025**

Negombo Case No: **CRI/95/2023**

Accused-Petitioner

Vs

Hon. Attorney General
Attorney General's Department
Colombo 12.

Complainant-Respondent

Before : **P. Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Kamal Suneth Perera instructed by P.S.A. Fernando for the Petitioner
Malik Azeez, SC for the State

Inquiry on : 28.10.2025

Decided on : 19.12.2025

Pradeep Hettiarachchi,

Order

Background to the Application

1. This is an Application for Accused-Petitioner named Karunapedige Chaminda Weerasena (hereinafter referred to as “the Petitioner”) under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. According to the B-Report filed by the police dated 31-12-2022, the Petitioner had been arrested by IP Pathum Kumara of the Police Narcotic Bureau for the possession and trafficking of 193 grams of Heroin, an offence punishable under section 54 A (1) (d) and 54A (1) (b) of the Ordinance, pursuant to a raid conducted by him and a team of police officers on 30-12-2022.

The Petitioner’s Version of events

3. According to the Petition, on 29-12-2022, the Petitioner and his wife have visited the house bearing the address No. 110 A/ 9, Siri Wimaladarma Nahimi Mawatha, Katana, at around 9.00 pm where one of the Petitioner’s friends is residing at. According to the Petitioner, this house has been leased out to one K.U.D. Perera by one P.J. Jayakody as the landlord by a lease agreement. At about 9.00pm when neither the lessor nor the lessee was presented at the said premises, a team of about 12 police officers including the officers called “Maduwa” and “Pathum Mahaththaya”, all in civil attire, had come and arrested both the Petitioner and his wife. The Petitioner states that, at the time of arrest, the Petitioner did not have in his possession any illegal substance. Also, neither the lessee nor the lessor had been presented at the location when the alleged arrest was taken place.
4. It is stated in the Petition that the officers who made arrest were under the influence of liquor and were aware of the two pending cases against the Petitioner before the High Court of Gampaha. Therefore, they were under the impression that the Petitioner is engaged in trafficking of dangerous drugs.

5. Subsequent to the arrest, the police officers asked the details about the other drug dealers and the Petitioner was also subjected to police brutality. According to the Petitioner he was stripped naked and assaulted throughout the night resulting a bleeding in his ear. The Petitioner has annexed the reports marked X3 and Q along with the Petition and the Counter Objections in order to substantiate the aforesaid facts.
6. The Petitioner's wife was also handcuffed and tortured. After having heard the cries of the Petitioner and his wife and possibly after communication by the police, the owner of the house one P.J. Jayakody, a school principal by profession, visited the said house in early hours of 30-12-2022.
7. Thereafter, the Petitioner was taken out of the house by the police officers and was asked to show the house of the 2nd Suspect. After arresting the 2nd Suspect, the police brought him and the 2nd Suspect back to the previous location.
8. According to the Petitioner, the police officers demanded Rupees Five Million from the Petitioner in order to release the Petitioner and his wife and had threatened them with legal action if they fail to comply.
9. At about 9.00 am on 30-12-2022, the police handed over the house key to the owner of the house and left the house taking the Petitioner, his wife and the 2nd Suspect with them. The police drove the Petitioner's vehicle bearing No. KV 7095 and it was in this vehicle that the Petitioner and his wife were taken.
10. The police allowed the Petitioner to use their mobile phones to call his friends to get down the money. According to the Petitioner, the Petitioner was able to get one of his friends deliver Rs.1 million to him at about 9.00 am on the same day and the money was handed over to the Petitioner's wife in the presence of the police near Sanero Institution at Naiwala while the Petitioner was inside the vehicle with police officers. The said monies were thereafter collected by the same police officers. The police have also taken them near to Veyangoda bridge to collect some money from the relatives of the 2nd Suspect as well. The Petitioner states that the National Police Commission is inquiring into the aforesaid incident and has already recorded a statement from his wife and his friend who brought money to Naiwala to be handed over to the police on the morning of 30-12-2022.

11. Thereafter, the police arrived at the Petitioner's residence at about 10.00 am in the morning and searched the house. Not being able to find any illegal substance from the Petitioner's residence, the police officers took Rs. 80,000/- of his money from the house and drove to the Police Narcotic Bureau by the police vehicle with the Petitioner and the 2nd Suspect. However, the police left behind the Petitioner's wife and also the vehicle bearing No. KV 7095 at the Petitioner's residence in Udugampola.
12. The Petitioner was produced before the Magistrate Court of Negombo on 31-12-2022 for the possession and trafficking of 193 grams of Heroin and kept under a detention order till 05-01-2023. Thereafter, when he was produced before the Magistrate Court of Negombo on 05-01-2023, the learned Magistrate ordered the Petitioner to be remanded and the Petitioner has been in remand custody since then. However, as per the Government Analyst Report dated 18-04-2023 the net quantity of Heroin which was allegedly recovered from the possession of the Petitioner was 16.57 grams.
13. It is also stated in the Petition that the Petitioner has previously filed a bail application bearing No. CA/Bail/601/2023, before this Court prior to the tower reports have been made available, which application was dismissed by this Court.
14. It is stated in the Counter Objections tendered on behalf of the Petitioner that, in addition to the inquiry before the Human Rights Commission and the National Police Commission, on the direction of the Attorney General, the Special Investigation Unit of the IGP is also conducting a separate investigation against the said team of police officers.

Relevant Law

15. Section 83(2) of the Ordinance has introduced special provisions when a person is accused or suspected of offences under section 54A and 54B of the Ordinance. Under section 83(2), this Court can consider bail only if exceptional circumstances are made out. Section 83 as amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022 reads:

Section 83. (1) Subject to the provisions of sections 84, 85 and subsection (2) of this section, a person suspected or accused of an offence under sections 54A and 54B of

this Ordinance, shall not be released on bail by the High Court except in exceptional circumstances.

(2) Notwithstanding the provisions of sections 84 and 85, a person suspected or accused of an - (a) of which the pure quantity of the dangerous drug, trafficked, imported, exported or possessed is ten grammes or above in terms of the report issued by the Government Analyst under section 77A; and (b) which is punishable with death or life imprisonment, [sic] shall not be released on bail except by the Court of Appeal in exceptional circumstances.

(3) For the purposes of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.

16. The provisions of section 83 (2) as amended by Act, No. 41 of 2022, manifest the intention of the legislature, i.e., a person accused or suspected of being in possession of 10 grams or more of the dangerous drugs is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. Therefore, the burden is on the Suspect to establish the existence of exceptional circumstances.

17. However, the exceptional circumstances are not defined in the Ordinance. Therefore, whether the grounds advanced by the Petitioner constitute exceptional circumstances must be determined based on the specific facts and circumstances of each case.

18. As stated in ***Ramu Thamodarampillai v The Attorney General*** [2004] 3 Sri. LR 180, “the decision must in each case depend on its own particular facts and circumstances.

19. In ***S v Peterson 2008*** (2) SACR (C) 355 the Court held that;

Generally speaking “exceptional” is indicative of something unusual, extraordinary, remarkable, peculiar or simply different but that because of varying degrees, it will therefore depend on the context and on the particular circumstances of the case under consideration.

Consideration of the Exceptional Circumstances

20. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration of this Court;

- (a) Even if the police state that the Petitioner was arrested on the 30-12-2022 at 10:00 hours at Katana, telephone tower report clearly shows that the Petitioner was at Korasa, Udugampola at that time.
- (b) In the first B-Report, the police have failed to state the location of arrest.
- (c) The Attorney-General has already discharged the 2nd Suspect from this case.
- (d) The police have revealed the actual place of arrest only in the sixth B-Report, subsequent to the complaint made to the Court and to the Human Rights Commission by the Petitioner's wife.
- (e) Even if the Court believes the police version of events as stated in the B-Reports, the alleged Heroin has not been found in the exclusive possession of the Petitioner, but from a house owned by and leased out to different parties.
- (f) The actual arrest took place on the night of the 29-12-2022 and not on 30-12-2022.
- (g) Medical reports confirmed that the Petitioner has been subjected to torture.
- (h) The on-going investigations by the human Rights Commission and Police Commission corroborate the Petitioner's version.
- (i) SSP Certificate to the Magistrate to obtain the detention order does not reveal a place of arrest.
- (j) Although the Government Analyst Report was available since 18-04-2023, trial has not started yet, although two years have gone since then.
- (k) Net weight of the Heroin allegedly found from the Petitioner's possession was only 16.57 grams.

21. Accordingly, the Petitioner mainly challenges the date of arrest. The Petitioner's position is that the Petitioner was arrested on the day prior to the day that is mentioned in the B-Report. To substantiate his position, he has annexed the tower reports of his mobile phone number 07771645945 to the Petition. In this regard, it is pertinent to note that, as per the B-Report dated 31-12-2022, the Petitioner had been arrested on 30-12-2022 at about 10.00 am.

22. However, both in the first B-Report submitted on 31-12-2022, and the SSP's Certificate to the Magistrate to obtain the detention order, the place of arrest has not been disclosed. Thereafter, the police had filed several B-Reports and on the B-Report submitted on 27-02-2023 the place of arrest of the Petitioner has been disclosed as the house bearing No. 110/A, Siri Wimaladarma Nahimi Mawatha, Katana North, Katana. Nevertheless, upon perusal of the telephone tower report of the Petitioner's telephone number 07771645945, on the said date and at around 10.18 hours, it appears that the Petitioner's mobile phone had been active at Korosa, Udugampola, where his house is situated, and not at the place where the Petitioner was arrested. These facts indicate that there is an inherent improbability in the police version that the arrest was made on 30-12-2022 at the leased house in Katana. This, in my opinion, creates a serious doubt on the prosecution's version of events.

23. Furthermore, regarding the time period spent in remand, this Court has previously in a long line of judicial authorities have held that the period spent in remand custody alone does not suffice to grant bail to a suspect or an accused. For instance in Labukola **Ange Gedara Ashani Dhanushika** CA (PHC) APN 04/2016, Dehideniya J stated that the time spent in remand custody alone cannot be considered as an exceptional circumstance warranting the grant of bail to a suspect when the suspect has been previously convicted for similar offences. He stated;

In the present case he Petitioner has failed to establish any exceptional circumstances warranting this Court to exercise the revisionary jurisdiction. The Petitioner's first point is that the suspect is in remand nearly for two years. The intention of the Legislature is to keep in remand any person who is suspected of or accused of possessing or trafficking heroin until the conclusion of the case. The section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance express the intention of the Legislature. It is enacted by the Parliament that "No person suspected or accused of an offence under section 54A or section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances."

24. In the Statement of Objections, the 1st Respondent has stated that the Petitioner has deliberately refrained from divulging the exact nature of his previous conduct, which according to the material available to the Respondent includes multiple instances of

committing offences under the Ordinance. Accordingly, the Petitioner has one previous conviction for possession of 1 gram of Ganja on 11-04-2017 and was convicted by the Magistrate Court of Attanagalla and was imposed a fine of Rs. 2000/-. Furthermore, the Petitioner has two pending cases (i.e, cases bearing Nos. 63/2016 and 159/2019 before the High Court of Gampaha for the possession of Heroin. Therefore, it appears that the Petitioner has been arrested for the alleged offences while he was out on bail for the two cases pending before the High Court of Gampaha.

25. When considering an application of this nature, this Court should be mindful of the fact that when a person is accused or suspected of being in possession of 10 grammes or more of a prescribed drug under Section 82(3) of the Ordinance, those stringent bail provisions should not be used to keep a person in remand for an indefinite period without taking the necessary steps to prosecute him, as it would amount to a denial of liberty due to no fault of his own.
26. In the present case, the Petitioner has been allegedly arrested on 29-12-2022. The Government Analyst Report had been issued on 18-04-2023, The Indictment against the Petitioner was served on 20-02-2024. Thereafter, the pre-trial conference has commenced on 19-09-2024. As per the journal entries of the case bearing No. CRI/95/2023 it appears that the pre-trial conference has not yet been concluded. Therefore, it cannot be anticipated about a possible time frame within which the trial against the Petitioner will be concluded.
27. While this Court cannot lightly disregard the two pending cases of similar nature against the Petitioner and his previous conduct, especially his propensity towards reoffending if granted bail, the delay of nearly three years when considered in conjunction with the inherent improbabilities and the glaring discrepancies with regard to the date of arrest, warrants granting of bail to the Petitioner.
28. To elaborate further, the petitioner, although having two pending cases of a similar nature, should not be denied bail where there exist inherent improbabilities in the alleged arrest. Undoubtedly, the existence of two pending High Court cases would ordinarily dissuade this Court from granting bail in a typical application of this nature. However, the telephone records produced by the petitioner unmistakably undermine the police narrative

relating to the arrest and the alleged recovery of heroin from his possession, and they strongly corroborate the Petitioner's version of events. This factor alone constitutes an exceptional circumstance warranting the grant of bail.

29. Accordingly, I enlarge the Petitioner on bail, subject to the following conditions:

- (a) Cash bail of Rs.200,000.00;
- (b) There shall be two sureties and they must enter into a bond of Rs 500,000.00 each;
- (c) The Petitioner shall surrender her passport if any to the courts and shall not apply for a travel document without the permission of the Court; and
- (d) The Petitioner is required to report to the Officer in Charge of Police Narcotic Bureau on 1st and 30th of every month.

30. The Registrar of this Court is directed to communicate this bail Order to the High Court of Negombo under CRI/95/2023, and the Magistrate Court of Negombo, and the Officer-in Charge of the Police Narcotic Bureau, Colombo 01 forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal